

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2989 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BATUKRAI D DAVE

Versus

NATVERLAL F TRIVEDI

Appearance:

MR JR NANAVATI for Petitioners
MR JD AJMERA for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/02/2000

ORAL JUDGEMENT

The petitioners who were initially serving as teachers at village schools in Bhavnagar District had been transferred to the City of Bhavnagar and posted in various schools under the control of the respondent No.

1, have preferred this petition seeking a direction on the respondent No. 1 to finalise the provisional seniority list as per the rules and till then not to issue promotion orders. According to the petitioners, the respondent No. 1 had prepared a provisional seniority list on 5.8.1985 inviting objections from the teachers against the provisional list. However, thereafter the list has been finalised and the respondent No. 1 has been giving promotion to the teachers who were junior to the petitioners. It is stated that some teachers had filed Civil Suit in the Court of Civil Judge (S.D.), Bhavnagar for restraining the respondent No. 1 from giving promotion to the post of Headmaster. On 20.4.1987 status quo was granted in that Civil Suit. Still however, order promoting some teachers came to be passed on 5.12.1987 and 17.12.1987. According to the petitioners, the respondent No. 1 was likely to issue further promotion orders and promote persons who were junior to the petitioners in the cadre of teachers. It is contended that giving of promotion to persons juniors to the petitioners was an arbitrary act in violation of the criteria laid down in the Circular which was issued by the respondent No. 2 on 30.7.1977 and it also violated the provisions of Article 16 of the Constitution of India.

According to the respondents no person junior to the petitioners was promoted and because the petitioners joined respondent No. 1 after 1977 and they were earlier serving in the District Panchayat they were required to be placed at the bottom of the seniority list. In para 3 of the affidavit in reply it is stated that the petitioners joined respondent No. 1 on their own request by transfer on two conditions, that they would lose their seniority and will be placed at the bottom of the list. According to the respondent No. 1 in view of this stipulation, the services rendered by the petitioners prior to their joining the respondent No. 1 has no relevance for the purpose of seniority. Respondent No. 1 has relied on paragraph 6 of the Government Resolution dated 30.7.1977 and contended that those who have been transferred from other District had to be shown at the bottom of the seniority of the teachers recruited in the year concerned. It is then stated that a final seniority list was also issued of the teachers showing their position as on 31.12.1977 and 24.4.1978 and in that final seniority list there were teachers from serial No. 1 to 685. It is stated that promotions were given on the basis of inter se seniority and that all the posts of Headmasters and Taluka Headmasters were filled in on that basis. It is stated that the petitioners who came to the

cadre by transfer after 1977 were junior to all those who were in the final seniority list prepared on 31.12.1977. Since the petitioners' seniority was to be reckoned only from 1977 onwards, no promotion to any person who is junior to the petitioners was given.

It appears that during the pendency of this petition, promotions have been given subject to the outcome of this petition and that fact has been mentioned in the orders of promotions in view of the condition contained in the interim relief which was granted.

The petitioners had filed their objections to the provisional seniority list and admittedly that list was not finalised till the date when the affidavit in reply was filed on 19.8.1988 by the respondent No. 1. It does appear from the record that promotions were given from those who were in the final seniority list as on 31.12.1977 and that the respondent No. 1 has proceeded on the footing that those who were transferred from the village schools of Bhavnagar District to Bhavnagar City under the control of the respondent No. 1 after 31.12.1977 were to be considered junior to those who already found their place in the seniority list as on 31.12.1977. The petitioners came by transfer on their own request in the cadre under the control of the respondent No. 1 in which they otherwise would have had no right. Therefore, their being treated as junior most after coming to the new cadre would not be an act of arbitrariness. However, the petitioners have raised their objections against the provisional seniority list and if no decision is taken for finalisation of the seniority list, the respondent No. 1 shall finalise the same within two months from today. Subject to this direction, the petition is rejected. Rule is discharged with no order as to costs.

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